

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 27, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Request for Approval of Special Installment Agreement for Payment of  
Retroactive Rent under General Lease No. 3269 to Country Club-Hawaii, Inc.,  
Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-05:20.

LESSEE:

Country Club-Hawaii, Inc. a Hawaii corporation, 161 Banyan Drive, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Board policy of January 28, 2000, Item D-19, as amended.

LOCATION AND AREA:

Portion of Government lands situated at Lot 10 Ocean View Lots, Waiakea, South Hilo,  
Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-1-05:20, consisting of approximately .092 acres  
more or less as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Hotel, Apartment and Motel purposes.

TERM OF LEASE:

Original lease was for 21 years commencing on June 1, 1949 and expiring on May 31,  
1970.

Extension of lease dated November 16, 1962 extended the term changing the expiration  
of lease to March 14, 2015. Last rental reopening for remaining lease period occurred on  
November 22, 2007.

ANNUAL RENTAL:

From November 22, 2007 to March 14, 2015: \$49,000.00.  
From November 22, 1987 to November 21, 2007: \$14,500.00.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

By letter dated February 10, 2009, the agent for the Lessee, Kevin Aoki, requested an installment payment plan on behalf of the Lessee to pay off retroactive rent in the amount of \$62,749.99 incurred as a result of the most recent rental reopening under the lease.

The annual lease rent in the twenty-year period ending November 21, 2007 was \$14,500.00. In 2006, DLNR hired an appraiser to determine the rent for the ensuing eight-year period, and the annual rent was established at \$48,300 for the remaining term of the lease. DLNR notified Lessee of the new rent by letter dated May 10, 2007. Lessee disputed the new rent and Lessee and the State proceeded to arbitration to resolve the dispute.

By memorandum dated April 18, 2008 (Exhibit B), the arbitration panel set the new rent at \$49,000 per year. This new rent was higher than both the department appraisal and the Lessee hired appraisers' findings. In a letter addressed to the staff appraiser dated August 20, 2008, Mr. Aoki requested a copy of the arbitrator's appraisal. Staff informed the Lessee that he would need to contact the arbitrator himself for a copy as the land division office also, did not have a copy of the report.

Subsequently, the Lessee has agreed to pay the arbitrated amount. Under Lessee's proposal, Lessee would pay \$27,749.99 of the retroactive rent upon the Board's approval of the installment plan. Lessee would pay the balance of \$35,000.00 over 2.3 years at 7% interest per annum with 27 monthly payments of \$1,376.62 which would fully amortize the retroactive rent as indicated in the schedule attached as Exhibit C. Additionally, Lessee would continue to make semi annual rental payments of \$24,500.00. A memo was sent to Land Divisions Fiscal office to check the accuracy on the amortization schedule.

With the exception of retroactive rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A notice of default for non-payment of retroactive rent was issued on November 21, 2008. Lessee timely petitioned Land Division for acceptance of an installment plan. The last rental reopening occurred on November 22, 2007; there are no further rental reopenings scheduled for this lease. There are no existing special installment agreements on the subject lease. There are substantial improvements on the property that will revert to State ownership upon termination of the lease.

RECOMMENDATION:


In light of the sizeable down-payment under Lessee's proposal (44% of the outstanding retroactive rent amount), staff is recommending that the Board accept Lessee's proposal for paying the retroactive rent on an installment basis on the conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:

1. The total amount due is \$62,749.99.
2. Lessee shall pay to DLNR a down payment of \$27,749.99 within thirty (30) days of Board approval of the special installment agreement. Thereafter, commencing on April 1, 2009, Lessee shall make twenty-seven (27) consecutive monthly installment payments of \$1,376.62 on or before the first business day of each month.
3. The interest rate applicable to the payments under the installment plan is 7% per annum. Interest will begin accruing as of April 1, 2009.
4. Prepayments may be made without penalty.
5. Any delinquent installment payment will be charged a \$50.00 late fee plus 1% interest for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a breach under the lease. If such breach is not cured within 30 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions. In addition, Land Division may refer the matter of collecting all monies due to the State to the Department of the Attorney General or the collection agency contracted by the Department for appropriate action.
6. Land Division's Fiscal Office shall bill Lessee monthly for installment payments as well as the semi annual lease rental payments of \$24,500.00.
7. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

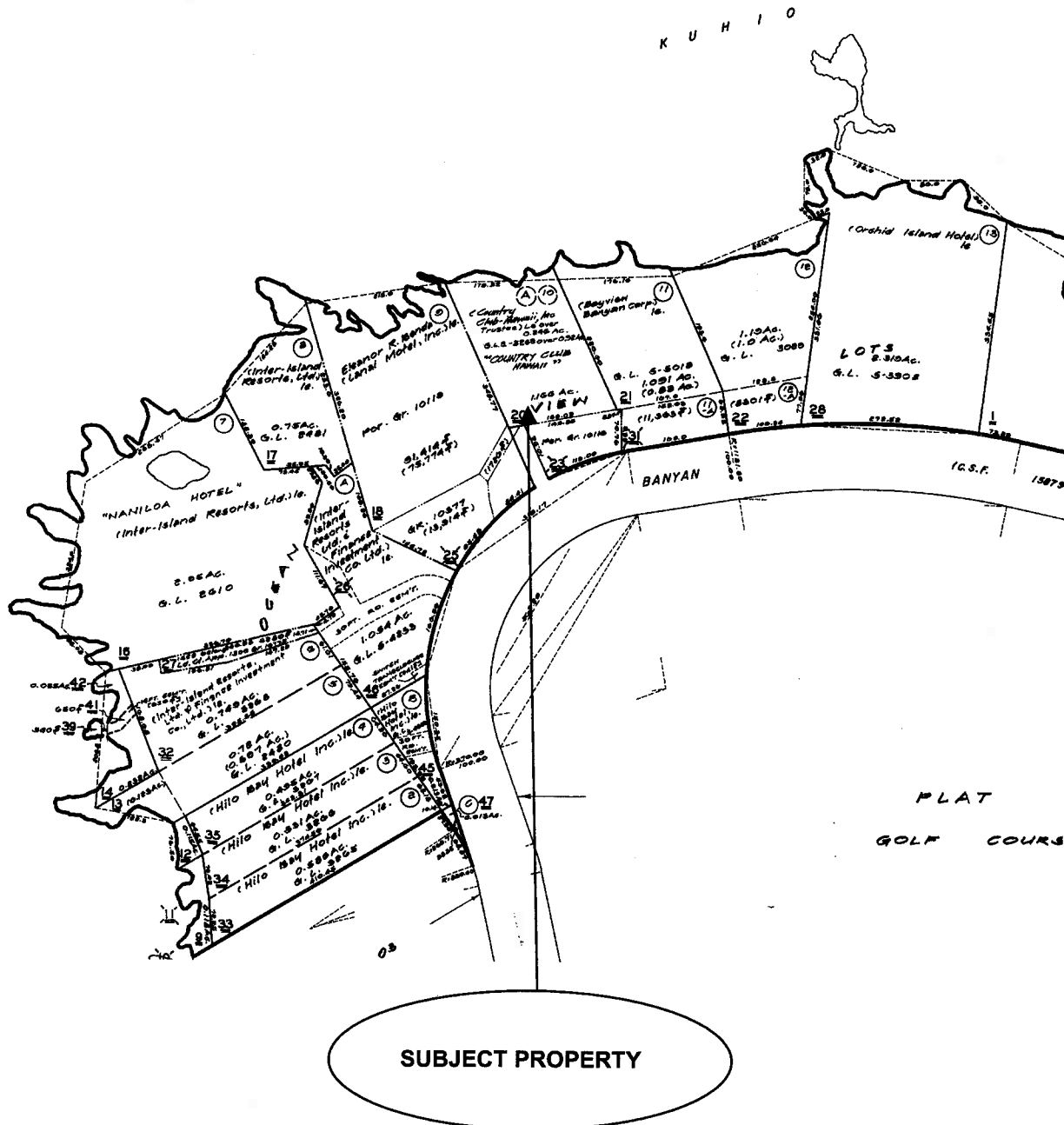
Respectfully Submitted,

  
\_\_\_\_\_  
Gordon C. Heit  
Land Agent *Ken*

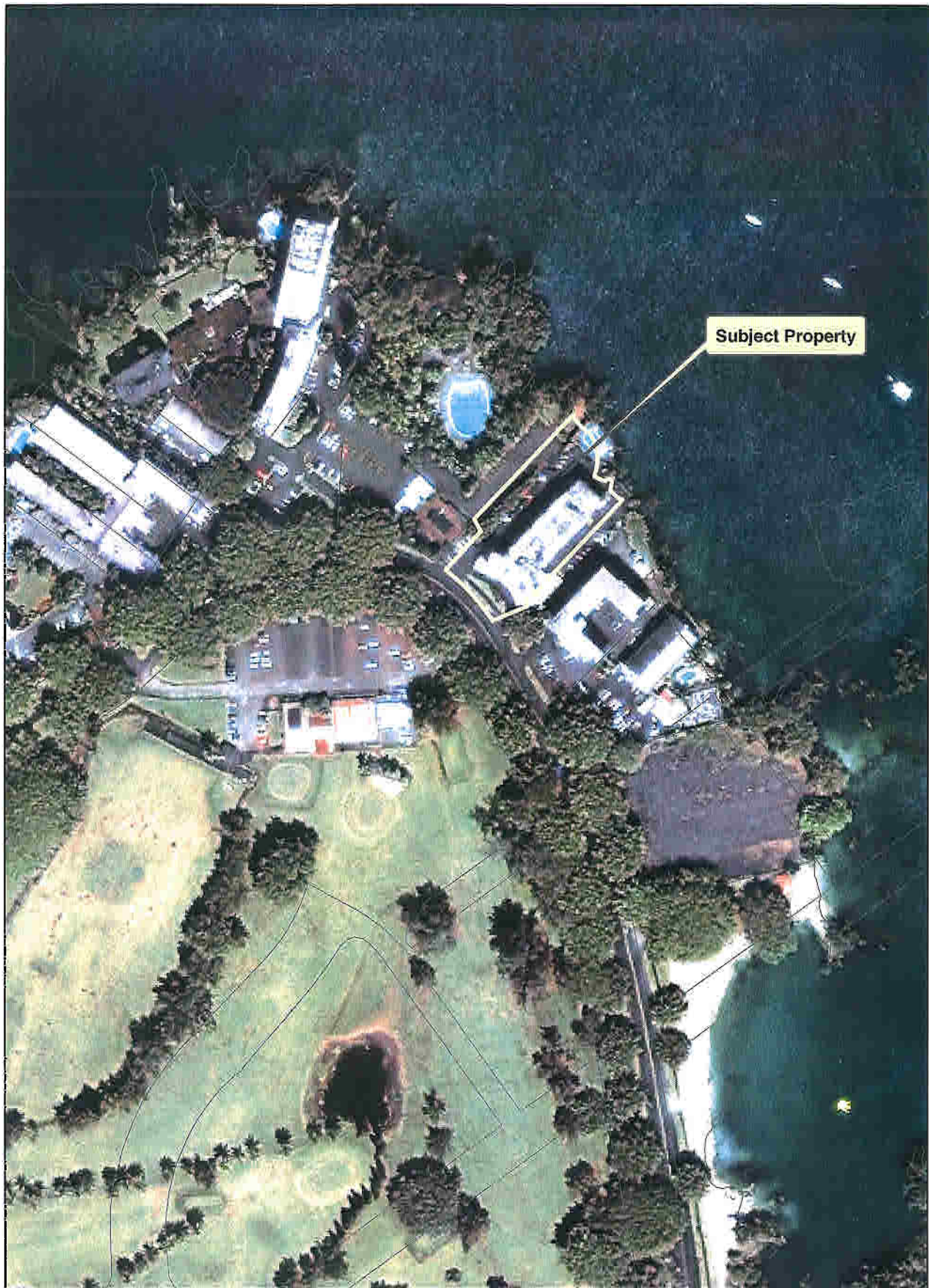
APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thieren, Chairperson

# EXHIBIT A



# GL 3269 Country Club-Hawaii, Inc. **EXHIBIT A**



0 85 170 340 510 680 Feet





April 18, 2008

Mr. Russell Y. Tsuji and Mr. Cyrus Chen  
Department of Land and Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, Hawaii 96813

Mr. Kevin Aoki  
Property Manager  
Country Club Hawaii Inc.  
121 Banyan Drive  
Hilo, Hawaii 96720

**RECEIVED  
LAND DIVISION****2008 APR 29 A 10:38**

**Subject:** Fair Market Rent Determination Pursuant to General Lease S-3269, between & the Department of Land and Natural Resources, (Lessor) and Country Club Hawaii Inc. a Hawaii Corporation (Lessee), of 0.92 acres, located at 121 Banyan Drive, Waiakea, South Hilo, Island and State of Hawaii. (TMK: 2-1-05: Parcel 20, Third Tax Division).

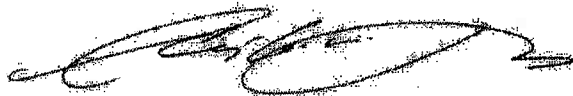
Pursuant to the terms of General Lease No. S-3269, between the Department of Land and Natural Resources (Lessor) and Country Club-Hawaii Inc. (Lessee), Craig K.W. Leong, MAI was appointed by Lessor, Larry Komata was appointed by Lessee, and Richard Dodge, SRPA, SRA was selected as the Third Person Appraiser to determine the fair market rental of the land beginning as of November 22, 2007.

The appraisers/arbitrators reviewed the lease, inspected the subject property, analyzed relevant market and other data known to them, considered all documents and other oral and written communications submitted by or on behalf of the Parties of Interest, and discussed their respective findings and conclusions.

Based on the foregoing, the appraisers/arbitrators determined that the fair market annual rental beginning as of November 22, 2007 is:

**FORTY NINE DOLLARS**  
**(\$49,000.00)**

The undersigned appraisers/arbitrators executed this letter as of the 18<sup>th</sup> day of April 2008.



Craig K.W. Leong, MAI



Larry M. Komata



Richard Dodge, SRPA, SRA

# REsearch™ Loan Payment Schedule

\$35,000.00 loan amortized over 2.3 years at 7.00%.  
 Monthly payment of \$1,376.62. First payment Mar 2009.  
 Total interest paid \$2,168.74. Total payments \$37,168.74.

Payment #	Month	Interest Paid	Principal Paid	Balance
<i>April</i> 1	Mar 2009	\$204.17	\$1,172.45	\$33,827.55
2	Apr 2009	\$197.33	\$1,179.29	\$32,648.26
3	May 2009	\$190.45	\$1,186.17	\$31,462.09
4	Jun 2009	\$183.53	\$1,193.09	\$30,269.00
5	Jul 2009	\$176.57	\$1,200.05	\$29,068.95
6	Aug 2009	\$169.57	\$1,207.05	\$27,861.90
7	Sep 2009	\$162.53	\$1,214.09	\$26,647.81
8	Oct 2009	\$155.45	\$1,221.17	\$25,426.64
9	Nov 2009	\$148.32	\$1,228.30	\$24,198.34
10	Dec 2009	\$141.16	\$1,235.46	\$22,962.88
	<b>2009</b>	<b>\$1,729.08</b>	<b>\$12,037.12</b>	<b>\$22,962.88</b>
11	Jan 2010	\$133.95	\$1,242.67	\$21,720.21
12	Feb 2010	\$126.70	\$1,249.92	\$20,470.29
13	Mar 2010	\$119.41	\$1,257.21	\$19,213.08
14	Apr 2010	\$112.08	\$1,264.54	\$17,948.54
15	May 2010	\$104.70	\$1,271.92	\$16,676.62
16	Jun 2010	\$97.28	\$1,279.34	\$15,397.28
17	Jul 2010	\$89.82	\$1,286.80	\$14,110.48
18	Aug 2010	\$82.31	\$1,294.31	\$12,816.17
19	Sep 2010	\$74.76	\$1,301.86	\$11,514.31
20	Oct 2010	\$67.17	\$1,309.45	\$10,204.86
21	Nov 2010	\$59.53	\$1,317.09	\$8,887.77
22	Dec 2010	\$51.85	\$1,324.77	\$7,563.00
	<b>2010</b>	<b>\$1,119.56</b>	<b>\$15,399.88</b>	<b>\$7,563.00</b>
23	Jan 2011	\$44.12	\$1,332.50	\$6,230.50
24	Feb 2011	\$36.34	\$1,340.28	\$4,890.22
25	Mar 2011	\$28.53	\$1,348.09	\$3,542.13
26	Apr 2011	\$20.66	\$1,355.96	\$2,186.17
27	May 2011	\$12.75	\$1,363.87	\$822.30
	<b>2011</b>	<b>\$142.40</b>	<b>\$6,740.70</b>	<b>\$822.30</b>